and others along the same line, in that there is an element of fraud in the instant case which is not present in that line of cases. In the instant case the prosecutor won the money by fraud in changing the number of cards; consequently, having obtained the property under false pretenses, he could not claim title against the true owner.

DIVORCE—DESERTION—ACQUIESCENCE SHOWN BY FILING LIBEL FOR DIVORCE ON THE GROUND OF CRUELTY.—The plaintiff's wife deserted him, and within a year after the said desertion, he filed and served upon her a libel for divorce charging cruelty. This case was dismissed by consent. Subsequently, more than three years after the said desertion, the plaintiff asked for a divorce on the ground of desertion. *Held,* the divorce should not be granted. *Moody* v. *Moody* (Me.), 108 Atl. 849.

Desertion was not mentioned as a cause for divorce either *a vinculo matrimonii* or *a mensa et thoro* in Viner's Abridgment. 15 Vin. Abr. 261. But desertion is now generally recognized as a cause for divorce under modern statutes. For a summary of the statutes of the various States, see note, 65 Am. Dec. 708. And since these statutes are in derogation of the common law, no divorce can be granted except for a cause expressly allowed by these statutes. *Stewart* v. *Stewart,* 78 Me. 548, 7 Atl. 473, 57 Am. Rep. 822. See *Maddox* v. *Maddox,* 189 Ill. 152, 59 N. E. 599, 52 L. R. A. 628, 82 Am. St. Rep. 431.

It has been judicially determined that the three elements of desertion are (1) that cohabitation has ceased, (2) that the defendant intended to desert, and (3) that the separation was against the will of the complainant. *Rose* v. *Rose,* 50 Mich. 92, 14 N. W. 711; *Sergent* v. *Sergent,* 33 N. J. Eq. 204. All of these elements are necessary. *Rose* v. *Rose, supra.* It is upon the third point that the instant case was decided.

It is a well settled principle of law that separation by mutual consent of the parties is not desertion. *Herold* v. *Herold,* 47 N. J. Eq. 210, 20 Atl. 375, 9 L. R. A. 696; *Ingersoll* v. *Ingersoll,* 49 Pa. St. 249. See *Latham* v. *Latham,* 30 Gratt. (Va.) 307. Of course it follows that the consent or acquiescense of the party deserted has the same effect. *Lea* v. *Lea,* 8 Allen (Mass.) 418. This consent does not have to be express, but may be implied. See *Gray* v. *Gray,* 15 Ala. 779.

The deserted spouse's consent may be shown by an actual agreement to live apart. *Secor* v. *Secor,* 1 McArth. (D. C.) 630. Nor can the husband secure a divorce on the ground of desertion where his wife leaves him without any objection on his part and in accordance with his desires. *Jones* v. *Jones,* 13 Ala. 145. Nor can a divorce be secured when the deserted party takes steps to prevent a renewal of the marriage relation in order to allow the statutory period to elapse. *McGean* v. *McGean,* 63 N. J. Eq. 285, 49 Atl. 1083. Again, though there was an actual desertion by one spouse, any subsequent overt act brought about within the statutory period by the deserted spouse, such as bringing a suit for divorce, will show consent to the separation and will defeat a later suit for divorce on the ground of desertion. *Ford* v. *Ford,* 143 Mass. 577, 10 N. E. 474. The continuity of desertion

may also be broken by an honest and *bona fide* offer on the part of the deserter to return and renew the marriage relation, which offer is refused by the deserted spouse. *Albee* v. *Albee,* 141 Ill. 550, 31 N. E. 153; *McGowan* v. *McGowan* (Tex. Civ. App.), 50 S. W. 399. Or it may be broken by the deserted spouse filing a bill for divorce. See *Ford* v. *Ford, supra.*

The particular point as to whether or not the filing of a libel for divorce within the statutory period operates as consent to the desertion has never arisen in Virginia. The Virginia law, which is in line with the weight of authority in regard to desertion, is discussed in *Bailey* v. *Bailey,* 21 Gratt. (Va.) 43; *Latham* v. *Latham, supra;* and *Washington* v. *Washington,* 111 Va. 524, 69 S. E. 322.

For a discussion of insanity as a bar to a suit for divorce on ground of desertion, see 6 VA. LAW REV. 133.

DIVORCE—INFANTS—APPOINTMENT OF GUARDIAN AD LITEM FOR INFANT DEFENDANT UNNECESSARY.—An infant wife brought suit for divorce and alimony. Service was made upon the defendant in person. When it developed, during the hearing in the lower court, that the defendant was an infant, his counsel moved to suspend the hearing and appoint a guardian *ad litem* to represent the interests of the minor defendant. This motion was overruled, and an order was passed requiring the payment of temporary alimony and attorneys' fees. *Held,* the judgment is affirmed. *Bentley* v. *Bentley* (Ga.), 102 S. E. 21.

It is well settled that when a judgment or decree against an infant defendant is assailed on error or on appeal, the record must show affirmatively that the infant was brought before the court according to the precise mode prescribed by statutes and rules of practice, and that a guardian *ad litem* was appointed to represent and defend him. Otherwise such judgment or decree cannot be sustained. *Woods* v. *Montevallo Coal, etc., Co.,* 107 Ala. 364, 18 South. 108; *Stinson* v. *Pickering,* 70 Me. 273; *McDonald* v. *McDonald,* 3 W. Va. 676. In every criminal prosecution, action at law, suit in equity or special proceeding in which an infant is defendant, it is the duty of the court to appoint, for him, a guardian *ad litem;* and until that is done the infant defendant cannot make a legal defense nor can any steps in the action be taken against him. See *Peak* v. *Shasted,* 21 Ill. 137, 74 Am. Dec. 83; *Thurston* v. *Tubbs,* 250 Ill. 540, Ann. Cas. 1912B, 375, and note; *Roberts* v. *Stanton,* 2 Munf. (Va.) 129, 5 Am. Dec. 463; *Weaver* v. *Glenn,* 104 Va. 443, 51 S. E. 835.

In New York it is well settled that an infant defendant, in a suit for divorce or annulment, must be represented by a guardian *ad litem* as in other cases. *Wood* v. *Wood,* 2 Paige Ch. (N. Y.) 107; *Fishbein* v. *Fishbein,* 179 App. Div. 883, 165 N. Y. Supp. 936. And even an infant plaintiff suing for divorce must have a guardian *ad litem* appointed to represent her. *Anderson* v. *Anderson,* 164 App. Div. 812, 150 N. Y. Supp. 359.

There are some authorities which hold that an infant can prosecute a suit for divorce without being represented by a next friend. *Jones*